

UNREDACTED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
VS)	NO.17-cr-10097
)	JACKSON, TENNESSEE
JOHN MICHAEL BRILEY)	
)	

SENTENCING HEARING

JANUARY 30, 2018

BEFORE THE HONORABLE S. THOMAS ANDERSON,
UNITED STATES CHIEF JUDGE

KRISTI HEASLEY, RPR
OFFICIAL COURT REPORTER
U.S. COURTHOUSE, SUITE 450
111 SOUTH HIGHLAND AVENUE
JACKSON, TENNESSEE 38301

UNREDACTED TRANSCRIPT

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EXHIBITS

NO EXHIBITS MARKED

UNREDACTED TRANSCRIPT

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EXAMINATION INDEX
NO TESTIMONY OFFERED

UNREDACTED TRANSCRIPT

1 (Defendant Present.)

2 MR. WILSON: Your Honor, on our next
3 matter, Mr. Massey and Ms. McClusky are here and actually
4 showed up before we started the last hearing. I've been
5 in court. If the Court would Grant us a brief recess
6 maybe we can expedite the hearing.

7 THE COURT: All right. Let's take about a
8 10 minute recess, Mr. Bryson.

9 (Recess Taken.)

10 THE COURT: All right. Our next matter,
11 U.S. versus John Michael Briley, No. 17-10097.

12 Let's see, who is -- Mr. Ivy.

13 MR. IVY: Mr. Wilson is going to be
14 addressing the Court for the government, Your Honor.

15 THE COURT: All right. Mr. Wilson, did
16 you receive a copy of the presentence report?

17 MR. WILSON: Yes, Your Honor.

18 THE COURT: Who is going to be speaking
19 for Mr. Briley, Mr. Massey or Ms. McClusky?

20 MS. MCCLUSKY: I will, Your Honor.

21 THE COURT: All right. Ms. McClusky, did
22 you see a copy of the presentence report?

23 MS. MCCLUSKY: Yes, Your Honor, we did.

24 THE COURT: Did you have an opportunity to
25 review the report fully and completely with Mr. Briley?

1 MS. MCCLUSKY: Yes, Your Honor, we did.

2 THE COURT: Okay. Let's take a look at
3 the calculations.

4 For the record, Mr. Briley pled guilty to
5 Count 1, identity theft, in violation of 18, U.S.C.
6 Section 1028(a)(7). That carries a statutory sentence of
7 not more than 10 years imprisonment, not more than
8 \$250,000 fine, or both, not more than three years of
9 supervised release, and a \$100 special assessment.

10 As far as the calculations, Counsel, I'm
11 looking on Page 7 beginning at Paragraph 23 under
12 Guideline 2B1.1(a)(2). The base offense level would be a
13 six.

14 At Paragraph 24, under 2B1.1(b)(1)(B),
15 there will be an additional two points added if the loss
16 amount exceeded \$6,500, but was less than \$15,000. That
17 would result in an offense level of eight.

18 And, of course, as you can see from the
19 report, there is a recommendation that Mr. Briley should
20 not receive credit for acceptance of responsibility.

21 Now, Mr. Wilson, what is the government's
22 position on that, or do you have a position?

23 MR. WILSON: Yes, Your Honor. To make
24 things short, we discussed this, I discussed this with
25 defense counsel on relevant additional guideline

1 provisions.

2 And I believe, I don't want to speak for
3 them, but we're all in agreement that as reflected in the
4 presentence report no reduction for acceptance of
5 responsibility is appropriate. So I think the
6 presentence report is correct, Your Honor.

7 THE COURT: All right. Ms. McClusky, do
8 you want to be heard on that issue?

9 MS. MCCLUSKY: Your Honor, that is
10 correct. We did talk about this, and this is what we
11 have agreed upon.

12 THE COURT: Okay. Well, then the Court
13 finds -- and I think the report accurately sets forth the
14 reasons why Mr. Briley would not be entitled to credit
15 for acceptance of responsibility. So there will be no
16 credit under 3E1.1(a) or obviously (b).

17 That results in a total offense level of
18 eight.

19 As far as Mr. Briley's criminal history
20 score on Page 8 at Paragraph 35, he has a zero criminal
21 history score. That would place him in criminal history
22 category I.

23 Based upon an offense level of eight and a
24 criminal history category of I, the guideline range of
25 imprisonment would be zero to six months. The period of

1 supervised release would be one to three years. There is
2 restitution sought in this matter. In fact, it's my
3 understanding that it either has been or will be paid, of
4 \$7,844.72. The fine range would be \$1,000 to \$10,000.
5 And there is a \$100 special assessment that is mandatory.

6 All right. Mr. Wilson, any objections to
7 the calculations as stated by the Court?

8 MR. WILSON: No, Your Honor.

9 THE COURT: Ms. McClusky, any objections
10 to the calculations as stated by the Court?

11 MS. MCCLUSKY: No, Your Honor.

12 THE COURT: All right. Then, Mr. Wilson,
13 let me hear from you first as far as what sentence you
14 believe would be appropriate for Mr. Briley.

15 MR. WILSON: Yes, Your Honor. As a
16 preliminary matter, I've again spoken with the defense,
17 and there were a number of letters I believe submitted to
18 the Court.

19 THE COURT: There were.

20 MR. WILSON: Okay. And in response this
21 morning I forwarded one letter to the Court.

22 But it's my understanding the defense is
23 going to have a request regarding those letters, and I as
24 well. I'm going to ask the Court to withdraw that letter
25 from consideration. And if the Court would hear from the

1 defense on those --

2 THE COURT: Which letter are we talking
3 about?

4 MR. WILSON: It was a letter from Dr. Joel
5 Perchik. Substantially the same information was
6 contained in the presentence report. Dr. Perchik having
7 addressed the agents and the information, I believe that
8 it's cumulative.

9 THE COURT: Okay. All right.

10 MS. MCCLUSKY: Your Honor, again, we have
11 had discussions on this matter with Mr. Wilson and Mr.
12 Ivy. And we all appreciate that some of the letters
13 reflected strong opinions that may differ with our joint
14 resolution of this case; therefore, we withdraw our
15 letters.

16 THE COURT: All your letters?

17 MS. MCCLUSKY: Yes, Your Honor.

18 THE COURT: Okay. All right.

19 Go ahead, Mr. Wilson. Where are you then?

20 MR. WILSON: Yes, Your Honor. Regarding a
21 sentence, the defendant having pleaded guilty to a felony
22 offense, we believe that the guidelines are correctly
23 calculated, ask the Court to impose a guideline sentence
24 and submit it to the Court for the Court's discretion.

25 THE COURT: All right. Ms. McClusky.

1 MS. MCCLUSKY: Thank you, Your Honor.

2 As a housekeeping matter, I would like to
3 introduce the Court to members of his family and
4 community of friends and associates that are here today.

5 THE COURT: Okay.

6 MS. MCCLUSKY: His mother and father, Mary
7 Nell and David Lynn Briley.

8 THE COURT: If you'll raise your hand when
9 she identifies who you are. Okay.

10 MS. MCCLUSKY: That's Mary Nell and David
11 Lynn Briley. His sister Ray Fuller is here. Dr. Colleen
12 Conway Welch, who is the Dean Emerita of Vanderbilt
13 University is here. Dr. Robert Hollis, who is the Chief
14 of GI at Western Tennessee Healthcare is here. Judy
15 Dorris, his 10 grade English teacher is here. Jeff
16 Schneider from the Madison County Sheriff's Department is
17 here. Richard Staples, who is the retired Chief of
18 Police for Jackson, Tennessee. Pat and Harry Hardwick
19 who are patients. Bob and Sharon Herrindon who are also
20 patients. I was introduced to Mr. Jones. But, Your
21 Honor, I cannot remember his first name.

22 MALE VOICE: Tod.

23 MS. MCCLUSKY: Tod. I'm sorry. He has
24 also been a patient.

25 Shanie Garcia was his first grade

1 girlfriend. She is here, Your Honor. As well as James
2 Mayo, a Professor of English Literature.

3 THE COURT: Okay. Thank you.

4 MS. MCCLUSKY: Your Honor, under the 3553
5 considerations the Court must look at the nature and
6 circumstances of the offense.

7 Certainly it's serious. It's a fraud.
8 And if violated Federal law. It is non violent. The
9 losses are not astronomical, but they remain very
10 important.

11 Looking at the history and characteristics
12 of Mr. Briley. He is a man who has been dedicated to his
13 family and his clinical practice. He has received a
14 number of accolades over the years.

15 And we have discussed these with the
16 government, Your Honor, and they have no objection to our
17 discussion of these.

18 He was the Outstanding First Year Student
19 at Vanderbilt University in 1991. He was a Tennessee
20 Delegate to Washington, D.C., American Nurses
21 Association in 1995. He has made seven trips at his own
22 expense to Egypt to administer immunizations to children.
23 He was the Practitioner of the Year in 1997, voted so by
24 the American Association of Nurse Practitioners. He
25 received the President's Award from President George Bush

1 in 2002. He was submitted as a candidate by Vanderbilt.
2 He received the Chancellor's Award from Vanderbilt in
3 2004. He was Alumni of the Year at U.T. Memphis in 2008.
4 He was President of Vanderbilt's University Scholarship
5 Committee from 2000 to 2013.

6 He was an Associate Professor of Nursing
7 at Freed-Hardeman University from 2006 to 2008. He was
8 the Assistant Professor of Anatomy at Freed-Hardeman in
9 2006. He was their campus health officer from 2005 to
10 2008. He served the state of Tennessee as Chair of the
11 Government Affairs Committee from 2006 to 2010.

12 Looking at the need for the sentence
13 imposed to reflect the seriousness of the offense. When
14 we look at the nature and circumstances we certainly see
15 it's serious. The collateral damages in this case,
16 however, is not as great when compared overall to what
17 the Court has seen. But that does again not back away
18 from the seriousness of this situation.

19 Promoting respect for the law. Look what
20 happened to Mr. John Michael Briley. His actions
21 destroyed his practice. He lost his license. He lost
22 his income. He hurt his family, friends and patients.
23 He hurt his community.

24 Respect for the law and rule of his
25 profession have become a part of his very being. He has

1 seen what error does. Look what happened. His respect
2 for the law assures that it will never happen again.

3 Just punishment. Under the guidelines
4 just punishment is viewed as a sentence of no
5 incarceration.

6 What we're asking for, Your Honor, is time
7 served and one year of supervised release.

8 To afford adequate deterrence. Any member
9 of the medical community who would not be deterred by the
10 public humiliation, the loss of his license, the loss of
11 his clinic, the loss of income, and the embarrassment to
12 his friends and family and patients will not be deterred
13 by a particular sentence. A person who wouldn't be
14 deterred by what has happened over him, to him over the
15 last four years, I think, Your Honor, is a person who
16 cannot be deterred. They only have to see what happened
17 to John Michael Briley already to be sufficiently
18 deterred.

19 To protect the public from further crimes
20 of the defendant. This man will not be a risk to the
21 public. The lesson has been painfully learned. He's
22 been humbled. He has watched others suffer because of
23 his actions. For a man whose life dream was to help, he
24 has had to admit he harmed. The lesson has indeed been
25 learned.

1 To provide the defendant with needed
2 educational, vocational or medical services. The
3 sentence would not avail him any of those. He's a
4 professional, he's educated himself. He could not --
5 there is no need to use the public expense any further
6 for him.

7 The kinds of sentences available. The
8 guidelines tells us zero to six months. As to a
9 pertinent policy statement, I know of none other than the
10 guidelines. And the guidelines offer such a low
11 sentence, and we are actually asking for time served.

12 To avoid unwarranted sentencing
13 disparities. I think we're safe in saying that given the
14 government's position in this case and the loss amount,
15 the sentence requested is not disparaged.

16 The need to provide restitution. He's
17 already given us \$7,500. I think early on we weren't
18 sure what the final amount would be. So we have a check
19 for \$7,500. He will pay the additional \$344.72 before he
20 leaves the building today, Your Honor.

21 The medical community is willing to give
22 Mr. Briley another chance. If he's placed on probation
23 they will not give him that chance. A sentence of time
24 served with one year of supervised release gives promise
25 to that chance.

1 Thank you, Your Honor.

2 THE COURT: All right. Thank you, Ms.
3 McClusky.

4 Mr. Briley, would you like to make any
5 statements? You are not required to, but I will be glad
6 to hear from you if you would like to say anything.

7 THE DEFENDANT: Yes, Your Honor, if you
8 don't mind.

9 THE COURT: Come up to the podium, please.

10 THE DEFENDANT: Thank you, Your Honor, for
11 giving me this chance to talk to you. And I want you to
12 know that I am so sorry. And this will never happen
13 again, I promise. I will make this right. And I will
14 put my, make my family and medical community who put
15 trust in me proud of me once more, as I have for 25
16 years. I will make you proud of me as well. I
17 apologize, Your Honor, for my actions, sincerely
18 apologize.

19 And I apologize to all those here today,
20 my patients, family, friends and associates. And I want
21 to thank you.

22 THE COURT: All right. Thank you,
23 Mr. Briley.

24 Mr. Wilson, do you want to respond in any
25 way?

1 MR. WILSON: No, Your Honor.

2 THE COURT: Anything else, Ms. McClusky?

3 MS. MCCLUSKY: I want to make sure that I
4 made it clear to the Court that if he got probation the
5 medical community will not relicense him.

6 THE COURT: Yeah, I think I understand
7 where you are coming from.

8 MS. MCCLUSKY: Thank you, Your Honor.

9 THE COURT: All right.

10 Mr. Briley, and I'm sure that Mr. Massey
11 and Ms. McClusky have gone over this with you. In fact,
12 Ms. McClusky addressed most of the factors, if not all
13 the factor that I'm required to consider in deciding what
14 the Court believes would be an appropriate sentence for
15 you in this case.

16 I'm going to briefly go over those again
17 just for your information. We refer to these as the
18 Section 3553 factors. And I'm instructed to consider
19 these factors in fashioning a sentence that I believe is
20 appropriate in any given case.

21 3353 states that the Court should consider
22 the following factors.

23 The nature and circumstances of the
24 offense and the history and characteristics of the
25 defendant. The need for the sentence imposed to reflect

1 the seriousness of the offense. To promote respect for
2 the law, and to provide just punishment for the offense.

3 It should also afford adequate deterrence
4 to criminal conduct, protect the public from further
5 crimes that you might commit, and provide you with any
6 needed educational or vocational training, medical care,
7 or other correctional treatment in the most effective
8 manner.

9 So I will be considering those factors and
10 taking them into consideration in deciding what I believe
11 is an appropriate sentence in your case.

12 For the record, I adopt the presentence
13 report as the factual findings of the Court in this
14 matter. To briefly summarize some of the more pertinent
15 information, it appears that on November 18th of 2015, a
16 Federal Grand Jury sitting here in the Western District
17 of Tennessee returned what turned out to be a 424 count
18 indictment against Mr. Briley.

19 It appears from the report that on
20 November 28th of 2016, this matter proceeded to trial.
21 However, because of unforeseen circumstances, a mistrial
22 was declared shortly into the trial that was taking
23 place. Thereafter, on November 14th of 2017, Mr. Briley
24 appeared before this Court and pled guilty to one count
25 of an information.

1 As I've already stated, Mr. Briley pled
2 guilty to identity theft, in violation of 21, United
3 States Code, Section 1028(a)(7).

4 In looking at the background, what is
5 referred to as the offense conduct, the report states and
6 indicates that beginning on or about August 19th of 2014,
7 the field office, the Nashville field office of the
8 Office of the Inspector General received information that
9 Mr. Briley, a nurse practitioner in Jackson, Tennessee,
10 was forging the signature of Dr. Joel Perchik, a
11 radiologist, on orders and plans of care for home health
12 services of Medicare patients.

13 The complainant also identified two other
14 physicians whose identities may have been stolen and used
15 by Mr. Briley to order home health services without the
16 physicians' knowledge or authorization. After receiving
17 the complaint, the Federal Bureau of Investigation joined
18 in the investigation of Mr. Briley.

19 At that time Mr. Briley owned and operated
20 a clinic in Jackson, Tennessee, known as the Primary Care
21 Specialists South, Incorporated. And it indicates in the
22 report that it was primarily an internal and family
23 medicine practice.

24 Mr. Briley was a nurse practitioner. And
25 as such, regulations required him to have a sponsoring

1 physician who spent at least 20 percent of the office
2 hours in the practitioner's office. Since Mr. Briley was
3 a nurse practitioner, he was not authorized to sign off
4 on home health services that were to be paid by Medicare
5 or Medicaid.

6 As part of the investigation Dr. Joel
7 Perchik was interviewed. According to Dr. Perchik, in
8 2006 he offered to temporarily be Mr. Briley's sponsoring
9 physician. However, in 2010 Dr. Perchik received a home
10 health care form at his office. He stated that he has,
11 as a radiologists he has consistently not authorized
12 services and had never authorized Mr. Briley to sign on
13 his behalf. At that time Dr. Perchik contacted
14 Mr. Briley, who advised the doctor that it was a mistake.

15 A few months later Dr. Perchik received
16 another form. And again he contacted Mr. Briley and
17 informed Mr. Briley that he was not his sponsoring
18 physician.

19 As part of the investigation, FBI agents
20 requested and obtained Mr. Briley's enrollment and
21 billing from Medicare from 2010 until approximately
22 August of 2014. Agents interviewed each of the
23 physicians and showed them for which patients Medicare
24 identified them as having ordered home health services.
25 And again Dr. Perchik confirmed that he had never ordered

1 any home health services.

2 In June of 2015, Mr. Briley was indicted
3 by a Federal Grand Jury on one count of aggravated
4 identity theft, and 145 counts of false statements
5 relating to healthcare matters. Again, this all relates
6 back to the forgery of Dr. Perchik's signature.

7 As the agents continued to pursue their
8 investigation, they began to get into the billing
9 practices of the clinic. Specifically, they interviewed
10 employees and former employees of the clinic. They got
11 into an investigation involving the number of x-rays that
12 were performed and were billed for. And ultimately they
13 determined that there were a substantial number of x-rays
14 that had allegedly been performed which were not. And in
15 many cases there had been billing for those x-rays, even
16 though they had not been performed.

17 On August 13th of 2015, a subpoena was
18 served on Mr. Briley's attorney. The subpoena demanded
19 approximately 475 patient charts, including any and all
20 x-rays, progress notes, interpretation reports, and other
21 documentation to determine whether x-ray services had
22 actually been performed.

23 Mr. Briley provided partial copies of all
24 but approximately 47 charts. And Mr. Briley indicated
25 that those 47 charts had either been lost or stolen. For

1 all the approximately 475 patient charts that Mr. Briley
2 provided, there were no x-ray images.

3 At that point, again the agents pursued
4 their investigation of these x-rays and the billing
5 practices there. Ultimately, on March 29th of 2016,
6 agents executed a Federal search warrant on Primary Care
7 Specialists South, Incorporated.

8 At that time they located approximately 30
9 of the 47 charts that Mr. Briley had represented to the
10 agents that had been lost or stolen. So he
11 misrepresented to the agents the status of those lost or
12 stolen records.

13 Ultimately it was determined that
14 Mr. Briley had received payment for 277 x-ray services
15 that never actually took place. And that constituted,
16 based on the best available evidence at the time, that
17 there was an amount of restitution owed of \$7,844.72.
18 Again, that's somewhat of a, just of an estimate number,
19 because the report indicates that x-ray services were
20 billed at different rates. They could range anywhere
21 from \$18 to \$41 to \$65.

22 So the amount was somewhat speculative.
23 But it appears that the government has agreed to that
24 amount, and Ms. McClusky has indicated that they're not
25 opposing that.

1 So those are the circumstances that bring
2 Mr. Briley before the Court.

3 Now in this matter, as I've already
4 stated, there is no criminal history points, so there is
5 no other criminal history. Mr. Briley has no other
6 criminal history in his background.

7 As far as the other information provided
8 in the report, it indicates that he was born in August of
9 1969. He indicated that he had what he referred to as a
10 perfect childhood. He stated he grew up on a farm with
11 very loving parents and many family members who were his
12 neighbors. So certainly he was fortunate to have a very
13 good childhood.

14 He reports that he has never been married
15 and has no children. As far as his physical condition,
16 he does indicate that he suffers from recurring kidney
17 stones, and that's something that he has been receiving
18 care for.

19 As far as his mental and emotional health,
20 he reported no history of mental and emotional or mental
21 illness. However, he did advise that in 2013 he did
22 begin experiencing depression and anxiety that was due in
23 large part to his profession and to his job.

24 As far as substance abuse, Mr. Briley
25 asserts and claims and states that he has never abused

1 alcohol and he has never used any other type of
2 medication, other than that which was prescribed by a
3 physician.

4 He self-reported to the Tennessee
5 Professional Assistance Program regarding his depression
6 and anxiety. And as a result of that, he underwent a
7 nine day evaluation at Bradford Health Services in
8 Alabama.

9 As a result, and as a part of this whole
10 process, he ultimately reported to Cumberland Heights
11 here in Jackson.

12 I do need to state that Mr. Briley has
13 indicated that he has, in his opinion and his belief, and
14 based upon his own knowledge, he has no substance abuse
15 problems. However, he did cooperate with what was
16 recommended. He ultimately ended up going through what
17 amounted to about a 60 to 90 day program. Ultimately, I
18 think it's a correct statement that it was concluded that
19 he did not have a drug related problem that was noted in
20 any way. And so he cooperated fully with that part of
21 the situation.

22 As far as his education, he graduated from
23 South Side High School here in Jackson. Attended
24 Freed-Hardeman University, graduated with a Bachelor's
25 Degree in Bible and Biology in 1991. He received his

1 Master's Degree in Nursing from Vanderbilt University in
2 1995. He enrolled at the University of Tennessee Health
3 Sciences in 2003, and received his Doctorate or Doctor of
4 Nursing Practice, Doctor and Doctorate of Nursing
5 Practice in 2006.

6 It appears that at that time is when he
7 opened Primary Care Specialists South in Jackson,
8 Tennessee. And he was employed there between 2006 and
9 2014.

10 As far as his financial condition, I'm not
11 going to go over all of that. I'm just going to simply
12 conclude that based upon the information provided in the
13 report -- and, Counsel, you can -- obviously, I'm sure
14 you've already examined it. It's Paragraph 52 on Page 11
15 of the report. It basically concludes that Mr. Briley
16 has a negative net worth based upon what has happened to
17 him, and also has a negative monthly cash flow.

18 On Page 12 at Paragraph 53, are a number
19 of debts that are owed, that are outstanding. And,
20 again, because of this situation, it's the Court's
21 understanding and belief that Mr. Briley has lost his
22 license and has not been allowed to engage in his
23 profession.

24 So those are the circumstances that bring
25 Mr. Briley before the Court.

1 Now I'll have to say that I read all the
2 letters that were submitted. Now that they have been
3 withdrawn, I guess I won't refer to those. But it's sort
4 of like you know something, but you can't utilize it, I
5 guess is the best way to say it.

6 I will say, and I think it would be a fair
7 statement, based on the number of people who are in court
8 today, that it appears to the Court, at least, that
9 Mr. Briley has a large cross-section of people who have
10 faith and confidence in him and who believe in him.
11 However, that's one aspect of looking at it.

12 This is a serious offense. Mr. Briley,
13 I -- you know, one thing I haven't heard yet and still
14 don't know, is what precipitated you engaging in this
15 particular conduct. And I don't want you to address
16 that, I'm just talking now.

17 Obviously, the assumption is you engaged
18 in this type of conduct for financial gain. That would
19 be the logical assumption.

20 But when I review the entire matter, your
21 situation is a little different than some that come
22 before this Court. Unfortunately, the Court is having to
23 deal more and more with these types of cases, these types
24 of Medicare and Medicaid fraud. And unfortunately, in
25 the Court's opinion, they are becoming more commonplace.

1 And ultimately when that happens, then obviously the tax
2 payers of the country are the ones that ultimately are
3 ripped off. And that causes me a great deal of concern.

4 So I have to try to balance that aspect of
5 this case against the fact that Mr. Briley has a large
6 number of friends and family who believe strongly in him.
7 Again, since the letters have been withdraw, I'm not
8 going to refer to those. But by the number of people in
9 court today that indicates to me that that's still the
10 case.

11 As I mentioned earlier, the offense level
12 here is eight, the criminal history category is I. The
13 guideline range of imprisonment is zero to six months.
14 The period of supervised release is one to three years.
15 I don't believe that Mr. Briley is in a position to pay a
16 fine, based upon his financial report.

17 And Ms. McClusky has already indicated
18 that they have funds, I assume in your escrow account, to
19 pay a majority of the restitution.

20 MS. MCCLUSKY: Yes, Your Honor, we have
21 \$7,500 check today. That will pay off the --

22 THE COURT: That is going to be taken care
23 of in due course.

24 Considering everything, and considering
25 the factors under Section 3553 -- Mr. Briley, I've got to

1 tell you that for those of us who do this every day, the
2 people sitting at counsel table, Mr. Massey,
3 Ms. McClusky, the people from the government, and myself,
4 cases like yours are oftentimes harder than some of the
5 others. What makes it harder is because you do have a
6 lot of support.

7 You have done a lot of good things for the
8 community. From what I can tell from the report and from
9 what Ms. McClusky has said as part of her argument, you
10 have been a very kind and compassionate and
11 community-oriented person. You've tried to assist others
12 when you could. So there are a lot of good things to
13 consider about where you are and why we're here.

14 Then there is the other side. Again, I
15 often wonder what motivates someone in your position to
16 think that they can engage in the kind of conduct that
17 you engaged in, and there won't be very serious and
18 detrimental repercussions from that. But I can't get
19 inside your mind. I can't determine that. I just have
20 to go on the record that's before me.

21 I can tell you that if I just read a cold
22 record, the logical conclusion as far as I'm concerned
23 would be that a period of incarceration would be
24 appropriate for you. And I'm still not sure that it's
25 not.

1 Remember when I went over the 3553
2 factors, one of the primary factors that we consider is
3 what we call promote respect for the law. And so other
4 people are going to be looking at what happens to you.
5 And it may or may not, I don't know whether it influences
6 what other people do.

7 But certainly because you're a
8 professional and you come into court under these
9 circumstances, it's certainly reasonable to assume that
10 other people would look at what happens to you. And it
11 might or might not influence their conduct and decisions
12 that they make on whether to comply with the law or
13 whether to engage in activity that may be contrary to the
14 law.

15 At any rate, considering everything that I
16 have gone over, considering the factors under 3553,
17 Mr. Briley, I'm going to sentence you as follows.

18 I'm going to sentence you to time served.
19 I'm not going to require you to serve any additional
20 period of incarceration. However, I am going to impose a
21 period of supervised release of two years.

22 During the time that you are on supervised
23 release the following conditions will be in place.

24 You shall be required to participate in
25 drug and alcohol testing and treatment if deemed

1 necessary by your probation officer.

2 You shall be required to make full
3 financial disclosure to your probation office, and shall
4 provide the probation office access to any requested
5 financial information, including your tax returns and
6 credit checks.

7 You shall not own, have an ownership
8 interest in, or operate a medical business or sole
9 proprietorship providing medical services during the
10 period of time of your supervised release.

11 You may not hold employment as a nurse
12 practitioner if you acquire your, if you reacquire your
13 licensure with employment subject to approval by the
14 probation office.

15 Do you understand what I'm saying there?

16 Do you understand that, Ms. McClusky?

17 If he can obtain his license --

18 MS. MCCLUSKY: Yes.

19 THE COURT: -- than any type of employment
20 that he's going to pursue must be approved by the
21 probation office.

22 MS. MCCLUSKY: And that employment could
23 be to then open his own clinic. Because earlier -- I
24 just want to make sure --

25 THE COURT: Well, what do you think,

1 Mr. Wilson? What is your position?

2 MR. IVY: Judge, obviously, I mean, we're
3 here on a criminal case, we're not the medical board, as
4 to what he can and can't do.

5 Of course, if the Court orders him not to
6 open his own clinic -- I think we get right back into the
7 same situation of supervision that we ran into before.
8 So I think we would have a problem with that.

9 MS. MCCLUSKY: I'm not sure what that --

10 THE COURT: Well, what it comes down to,
11 Ms. McClusky, is -- you know, under these circumstances I
12 would normally not allow Mr. Briley to open a business,
13 because his history indicates that's not going to be a
14 productive way for him to proceed.

15 MS. MCCLUSKY: In this case, Your Honor,
16 the board has had this gentleman under their thumb and
17 under the microscope for four years. They have been
18 watching him and talking to him on a regular basis. He's
19 been sent to this clinic and he's been sent to that
20 clinic. He has done exactly as they have commanded.

21 Now the medical board is the one who
22 really must protect their view as far as what the public
23 sees. They are the ones that take a great risk when they
24 allow someone to be relicensed.

25 I would respectfully submit to this Court

1 that their decision to relicense him shows full faith in
2 his ability to run a clinic henceforth without the
3 problems that were there before.

4 I suggest to Your Honor that if you
5 will -- if they approve him, and then the probation
6 officer understands under which -- and they may put some
7 parameters around him for the first couple of years, to
8 say meeting regularly with financial advisers, talking
9 with members of the board. I think with those parameters
10 we would know that he truly, as we have said, will not be
11 a danger to the public.

12 But I think the board's decision and the
13 ramifications for the board to wrongfully relicense
14 someone let's us feel comfortable allowing him to open
15 and operate a clinic.

16 MR. IVY: Judge, and I think the key to
17 what Ms. McClusky says is supervision. And the Court
18 already stated that, subject to the approval of the
19 probation office. So if the board should approve that,
20 and the probation office, then so be it. But I think it
21 has to be approved by this Court through the probation
22 office.

23 THE COURT: Well, are you -- be sure I'm
24 understanding, Mr. Ivy.

25 Are you agreeable for him to open a sole

1 practice office if he's under supervision?

2 MR. IVY: And I understood the Court to
3 start with, that for him not to open a sole --

4 THE COURT: Well, that's what I said. But
5 that's why I'm trying to decide if I need to amend that
6 in any way.

7 I have real concerns about Mr. Briley
8 opening a sole practitioner office.

9 MR. IVY: And we do too, because of the
10 supervision. Same situation that we got into that got us
11 here. So that's where we are.

12 MS. MCCLUSKY: But with supervision --
13 it's my understanding that with supervision they would be
14 comfortable. I think with --

15 THE COURT: Well, they would be
16 comfortable, Ms. McClusky -- excuse me for interrupting
17 you.

18 But they would be comfortable with him
19 working for someone else, and not being -- what this
20 condition as we've crafted it says, he shall not own or
21 have an ownership in, or operate a medical business or
22 sole proprietorship providing medical services during the
23 term of his supervised release.

24 He can work for someone else under
25 supervision.

1 MS. MCCLUSKY: He has, owes a lot of
2 money. Could I have a minute to talk with him about
3 this?

4 THE COURT: Sure.

5 MS. MCCLUSKY: Because it all may be -- if
6 he's not allowed to practice...

7 THE COURT: We are not talking about him
8 not being allowed to practice. We're talking about him
9 not having an ownership interest in, or having a sole
10 proprietorship where he's in charge and running it and
11 maintaining a sole practice.

12 MS. MCCLUSKY: May I have a moment, Your
13 Honor?

14 THE COURT: Okay.

15 (ATTORNEY/CLIENT CONFERENCE.)

16 MS. MCCLUSKY: Your Honor, I'm informed
17 that per the board's requirements, if he's licensed he
18 will have to have another nurse practitioner there on
19 site. They've already made arrangements for that nurse
20 practitioner. And he has to have physician oversight.

21 They have gotten with the Director of
22 Quality Care. And that is Dr. Peter Gardner. And Dr.
23 Peter Gardner says that he will be the physician and he
24 will be on site once a week to review everything.

25 THE COURT: No. I'm not going to go with

1 that.

2 This is the condition. Mr. Briley shall
3 not own, or have an ownership interest in, or operate a
4 medical business or sole proprietorship providing medical
5 services during the period of supervised release.

6 He may hold employment as a nurse
7 practitioner, if he reacquires his license, with any
8 employment subject to the approval of the probation
9 office. All right.

10 Are we clear?

11 MS. MCCLUSKY: Yes, Your Honor, we are.

12 THE COURT: Ms. McClusky, if I'm
13 understanding what you were representing based on your
14 conversation with Mr. Briley, he was going to be back in
15 a circumstance where he was going to still be the
16 proprietor of a practice. And I think you said Dr.
17 Gardner or someone was going to be the supervising
18 physician, as I understood what you're saying.

19 MS. MCCLUSKY: Yes, sir.

20 THE COURT: But I think the concern here
21 for me or for the Court is just simply, this is what got
22 us here to start with. We're talking about a two year
23 period of time where Mr. Briley cannot own an interest in
24 a medical practice, cannot have a sole practice. He's
25 got to be working under the direction of someone else and

1 subject to the approval of the probation office.

2 MS. MCCLUSKY: My client has told me to
3 back off. He said he's fine with that.

4 THE COURT: All right.

5 MS. MCCLUSKY: So I will...

6 THE COURT: You will take your client's
7 advice.

8 MS. MCCLUSKY: I'll sit down.

9 THE COURT: All right.

10 Next condition. Mr. Briley shall be
11 required to submit to third party risk notification.

12 Ms. McClusky and Mr. Massey, I assume you
13 will explain that to Mr. Briley. I don't need to go into
14 any more detail.

15 MS. MCCLUSKY: Yes, sir.

16 THE COURT: He shall be required to
17 cooperate in the collection of DNA.

18 The last requirement on possession of
19 firearms, does that apply in this case?

20 MR. WILSON: He's a convicted felon, Your
21 Honor.

22 THE COURT: Okay. All right. Cannot
23 possess or own -- Mr. Briley, you cannot have in your
24 possession any kind of firearm or dangerous weapon.

25 As I've already stated, I'm not going to

1 impose a fine. I don't believe that Mr. Briley has the
2 resources to pay a fine.

3 Restitution will be in the amount of
4 \$7,844.72.

5 And based upon the representations made by
6 counsel, I will just say that the full amount shall be
7 paid within 72 hours of this hearing.

8 And there will be a \$100 special
9 assessment which shall be mandatory and due and payable
10 immediately.

11 All right. Mr. Wilson, anything else we
12 overlooked?

13 MR. WILSON: Well, Your Honor, regarding
14 the restitution, I have a breakdown provided by
15 investigating agent in the case as to which sub-entities
16 that is to go to. I've communicated with Mr. Massey, I
17 believe we're in agreement, as to whom those payments
18 will be made.

19 In Judge Breen's court I've worked with
20 Officer Long. He provides that information to the clerk
21 and then it is distributed per the restitution once it's
22 paid to the clerk's office. So I will provide that to
23 Officer Long. And if there is any further follow-up on
24 that, I will address that with the Court.

25 THE COURT: Well, I am also going to ask

1 you, if you will, Mr. Wilson, also provide that to
2 Mr. Bryson. I want it included in the judgment, so that
3 it's clear what, who is to be paid what and make sure
4 that we handle that accordingly.

5 MR. WILSON: Yes, Your Honor.

6 THE COURT: All right. Anything else,
7 Mr. Wilson?

8 MR. WILSON: Your Honor, the defendant --
9 the judgment becoming final in this case, I would move to
10 dismiss the, all indictments in Case No. 15-cr-10046
11 regarding Mr. Briley.

12 THE COURT: All right. I will grant that
13 motion and those charges will be dismissed.

14 Anything else from the government?

15 MR. WILSON: No, Your Honor.

16 THE COURT: All right. Ms. McClusky,
17 anything from you?

18 MS. MCCLUSKY: No, Your Honor.

19 THE COURT: All right. Are you waiving at
20 me, Mr. Briley, or do you want to say something?

21 THE DEFENDANT: I'm just saying thank you.

22 THE COURT: Well, let me address one other
23 thing with you, Mr. Briley.

24 I also received as part of all the reports
25 and documentation that the Court receives prior to coming

1 out here today, I also received what is referred to as a
2 release status report.

3 And that release status report indicates
4 that while you were on pre-trial supervision you failed
5 to report to pre-trial services on four separate
6 occasions. September of 2015, May of 2016, October of
7 2016 and September of 2017.

8 The report also indicates that you were
9 reprimanded by pre-trial services and reminded that as a
10 condition of your bond that you were required to make
11 these monthly meetings.

12 Now I point that out simply, Mr. Briley,
13 to make it as clear as I know how that the conditions
14 that I've imposed upon you you must follow literally. If
15 you have any questions about what your obligations are or
16 what your responsibilities are, then certainly Ms.
17 McClusky or Mr. Massey are more than capable of advising
18 you on how you need to proceed. But as well, the
19 probation officer is available and will do likewise.

20 But it is of utmost importance that you
21 comply with every condition, and that you do so without
22 exception. Do you understand?

23 THE DEFENDANT: Yes, sir, I promise.

24 THE COURT: Well, you need to know if you
25 don't, if you don't comply with these conditions, then

1 what will happen is I will receive a report indicating
2 that you have not complied. We'll come back to court --
3 and you escaped incarceration this time, so you need to
4 remember that.

5 Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Mr. Wilson, any
8 objection to the sentence imposed or the method utilized
9 by the Court in arriving at its calculations?

10 MR. WILSON: No, Your Honor.

11 THE COURT: Ms. McClusky, any objection to
12 the sentence as imposed or the method unitized by the
13 Court in arriving at its calculations?

14 MS. MCCLUSKY: No, Your Honor.

15 THE COURT: All right. That will be the
16 judgment of the Court.

17 Thank you. Good luck, Mr. Briley.

18 THE DEFENDANT: Thank you.

19 (End of Proceedings.)

20 (End of Requested Material.)

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1 I, Kristi Heasley, do hereby certify that the
2 foregoing 39 pages are, to the best of my knowledge,
3 skill and ability, a true and accurate unredacted
4 transcript from my stenotype notes in the matter of:

5
6
7 UNITED STATES OF AMERICA

8 VS

9 JOHN MICHAEL BRILEY

)
)NO.17-cr-10097
)JACKSON, TENNESSEE
)

10
11
12 Dated this 21st day of February, 2018.

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15
16 -----
17 Kristi Heasley, RPR
18 Official Court Reporter
19 United States District Court
20 Western District of Tennessee
21 Eastern Division
22
23
24
25